IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
JAIPUR BENCH, JAIPUR.

1. Food Corporation of India & Ors.V Niyaz Mohammad & Ors.
   (S. B. CIVIL MISC. APPEAL NO. 1660/2006)

2. Niyaz Mohammad vs Food Corporation of India & Ors.
   (S. B. CIVIL MISC. APPEAL NO. 3003/2006)

DATE OF JUDGMENT: 15th March 2007

REPORTABLE

Hon'ble Mr. Justice R. S. Chauhan

Mr. S. C. Mittal for the Appellant
Mr. Paker Farooq for the Respondent.

(Per Court):

Both these appeals arise out of the same factual matrix, although they are challenging different judicial findings. In the first appeal the appellant, the Food Corporation of India (henceforth to be referred to as 'the FCI', for short) is challenging the award dated 4-6-2003, whereby the learned Sole Arbitrator has granted a compensation of Rs. 7,50, 194.50/- to the respondent, as well as the Order dated 4-2-2006 passed by the District Judge, Jaipur, whereby the learned Judge has partly dismissed the objections filed by the FCI against the award dated 4-6-2003. On the other hand, in the

second appeal, filed by Niyaz Mohammad (henceforth to be referred to as ‘the claimant’, for short), he has challenged only the judgment dated 4-2-2006, whereby the learned Judge has reduced the interest rate from 12 % per annum to 9% per annum and has directed that no interest needs to be paid on the security deposit which was kept by the FCI. Since both the appeals share the same factual foundations, they are being decided by this common judgment.

The brief facts of the case are that on 16-10-1997, the FCI issued Notice Inviting Tenders for the appointment of Transport contractor from Covered and Plinth/ Food Storage Depot Alwar to Bandikui. Since Niyaz Mohammad, had submitted the lowest tender, the FCI accepted his tender on 22-12-1997. Subsequently, a work order was issued to him. According to the work order, he was granted the work of transporting the food grain for a period of two years, i.e. from 26-12-1997 to 25-12-1999 from Alwar to Bandikui. According to the Agreement, he deposited a sum of Rs. 91,000/- towards 50% of the Security Deposit and the other 50% was agreed by

the FCI to be deducted from the bills, @ 5% of each bill of the claimant. However, during the tenure of the contract, certain disputes arose between the parties. In accordance with the arbitration clause contained in the agreement, eventually the Indian Council of Arbitration appointed Mr. J. L. Nehru as the Sole Arbitrator.

The claimant filed his claim petition before the learned Sole Arbitrator. According to the claim petition, the FCI had illegally deducted Rs. 4,50,371.50/- on account of short delivery of the food grain, had illegally deducted Rs. 29,400/- on account of penalty and had illegally kept the security deposit with them. According to the claimant, the FCI should have given him the allowance of 0.25% as admissible shortage in transit as was given by the FCI to some other transporters in accordance with their circulars. However, the FCI denied such allowance to the claimant. Moreover, the reason for the alleged shortage of transport of food grain was due to the difference of weigh scales used by the FCI at the loading and the unloading points. The difference in weight is also affected by the seasons. Thus,

there was no fault on the part of the claimant. However, despite there being no fault on his behalf, the FCI has still deducted the amount for short supply of food grains. Moreover, the FCI had imposed a penalty ostensibly on the ground that the claimant had not supplied the requisite number of trucks for transporting the food grain. Because of this omission on the part of the claimant, the required amount of food grain was not transported. Hence, the public distribution system suffered. Hence, the penalty imposed on the FCI. In its claim petition, the claimant specifically pleaded that it never failed to supply the required trucks demanded by the FCI, from time to time. Thus, the imposition of the penalty was patently illegal. Lastly, since the claimant had transported the entire stock of food grain with the stipulated period of two years, there was no justification for the FCI to forfeit the security deposit. Hence, the same should be refunded to the claimant.

The FCI filed its reply to the claim petition and stated that the claimant did not perform his duty successfully. It failed to supply the requisite number of trucks as and when needed. The

quantity of food grain given to him at the loading point, it failed to deliver the same at the unloading point. There was a distinct shortage between the two points. According to the contract the food grain was deemed to be in the custody of the claimant till the food grain was delivered at the destination. Thus, the claimant was responsible for any shortfall in the quantity of food grain transported by it. Hence, the deduction for shortage of food grain was made in accordance with Clause XIX (3) (6) and XIX 7 (f) of the contract. Lastly, since the claimant had not fulfilled his contractual obligations, the FCI was justified in forfeiting the security deposit.

However, after hearing both the parties, the learned Sole Arbitrator granted compensation in favor of the claimant as under:

Deduction on account of shortage	Rs. 3,91,461.50/-
Refund of Security Deposit	Rs. 1,82, 000/-
Deduction on account of penalty	Rs. 41,100/-
Expenses of Arbitration	Rs. 18,200/-
Refund of excess amount deducted By FCI	Rs. 18,433/-
Grand Total	Rs. 7,50,194 .50

The learned Sole Arbitrator further imposed an interest of 12% per annum on the amount of Rs. 3, 91,461.50/- in case the same is not paid within the period of sixty days; on the amount of Rs. 1, 82,000/- he imposed an interest of 12 % per annum from 1-7-2000 till the actual realization; on amount of Rs. 41, 100/- he imposed an interest of 12% per annum in case the same is not paid within the period of sixty days; no interest was imposed on amount of Rs. 18,200/-, but interest of 12% per annum was imposed on the amount of Rs. 18,433/- in case the same was not paid within a period of sixty days from the date of receipt of the copy of the award.

Since the said award aggrieved the FCI, they filed their objection under Section 34 of the Arbitration and Conciliation Act, 1996 (henceforth to be referred to as ‘the Act’, for short) before the learned Judge. But vide Order dated 4-2-2006, the learned Judge partly dismissed the objections. While the learned Judge has rejected most of the objections raised by the appellant, he did allow the objections with regard to imposition of the interest. Since most of the objections have been dismissed, hence the first appeal filed by the FCI; since the

learned Judge has reduced the interest rate applicable on the compensation amount, and has disallowed the interest on the security deposit kept by the FCI, the second appeal filed by the claimant.

S. B. CIVIL MISC. APPEAL NO. 1660/2006:

While arguing the first appeal, Mr. S. C. Mittal, the learned counsel for the FCI, has raised various contentions before this court: firstly, according to the arbitration clause contained in the contract the arbitration proceedings were to be carried out in conformity with the rules of arbitration of the Indian Council of Arbitration (henceforth to be referred to as the "ICA Rules', for short). According to the said ICA Rules, the Arbitrator has an option of either holding the proceedings according to the 'regular' procedure, or to adopt the 'Fast Track Procedure'. However, before the Arbitrator can proceed according to the "Fast Track Procedure", the consent of both the parties to arbitration is necessary. According to the learned counsel, though the parties had not agreed to the adoption of the "Fast Track Procedure", the Arbitrator still adopted the "Fast

Track Procedure". Hence, he has committed a procedural illegality. Hence, the award stands vitiated.

Secondly, according to the contract it was the responsibility of the claimant to supply adequate number of trucks for transporting the food grain in accordance with the instructions issued by the Senior Regional Manager or an officer acting on his behalf. Further, according to Clause 7 (f) of the contract, "*in case the party fails to provide ten trucks each day for each center, penalty of Rs. 100/- per ay per truck would be imposed. (However, this would be based on the requisition made by the AM (D) / District Office on the party in writing)*". Since the claimant failed to provide adequate number of trucks, the FCI was justified in imposing the penalty. But, the learned Sole Arbitrator has directed the refunding of the penalty ostensibly on the ground that the FCI did not prove the actual loss suffered by them. In absence of such a proof, the FCI was not entitled to impose the penalty as stipulated in the contract. For, the claimant had transported the entire stock of food grain during the stipulated period. But, according to the learned

counsel such an interpretation is in violation of Section 74 of the Contract Act, which clearly stipulates that in case of breach of contract the non-offending party is entitled to receive the penalty named in the contract from the offending party even if no loss has been sustained. Thus, the award is in contravention of the Contract Act.

Thirdly, according to the contract once the food grain was loaded on to the trucks, the responsibility of transporting the same quantity of food grain was on the claimant. However, many a times, there was shortage in the food grain transported by the respondent. The FCI were entitled to recover for the shortage of food grain transported. This is clear from Clauses 19 (3) and (6) of the contract. Still the learned Sole Arbitrator has directed the money deducted by the FCI for shortage of food grain to be refunded to the claimant. Such a direction is in violation of Clause 19 (3) and (6) of the contract.

Lastly, the according to the contract the interest was not payable on the security amount to the respondent. Yet still, the

learned Sole Arbitrator has directed the payment of the interest on the security amount to the claimant. All these objections could be raised validly under Section 34 (2) (a) (v) of the Act. But, despite the solid foundation of the objections raised by the appellant, the learned Judge has erroneously dismissed the objections, except the objection on the point of grant of interest on security amount.

On the other hand, Mr. Paker Farooq, the learned counsel for the claimant, has also raised a number of counter contentions: firstly, that the learned Sole Arbitrator did not adopt any “Fast Track Procedure” as claimed by the FCI. The ICA Rules envisage a fast track procedure, which entails that the arbitration proceeding should be completed within a short period of six months. However, in the present case, the arbitration proceeding continued for over a year. Moreover, neither before the learned Sole arbitrator, nor before the learned Judge, did the FCI raise this objection. Thus, they are precluded from raising the said objection now. Furthermore, according to Rule-58 of the ICA Rules, “*in case any party*

proceeds with the arbitration with the knowledge that any provision or requirement of these rules has not been complied with and who fails to state his objection thereto in writing, shall be deemed to have waived his right to object". Since the FCI has participated in the arbitration proceeding, under Rule-58 they are deemed to have waived his right to objection with regard to the alleged adoption of the "Fast Track Procedure". Lastly, once the FCI has subjected themselves to the proceedings before the learned Sole Arbitrator, they cannot turn around and challenge the proceedings on the ground of procedural lapses. They could have done so during the tenure of the proceedings, but not afterwards. Since they failed to challenge the procedure during the proceeding, they are deemed to have acquiesced to the procedure followed by the learned Sole Arbitrator.

Secondly, the scope of judicial review of an arbitration award is extremely limited. Since the parties themselves appoint the learned Sole Arbitrator, his award is binding upon the parties. In fact, this facet is revealed in the arbitration

clause contained in the contract, for the clause clearly states that the award shall be a reasoned one and shall be binding upon the parties. Once, the award is binding on the parties, the same cannot be challenged lightly before the learned Judge. Moreover, even if the arbitrator has wrongly appreciated the facts, or has wrongly applied the law, the same is not amenable to judicial review. Further, neither this court, nor the Civil Court can sit as a court of appeal over the award. Even if there are two interpretations of the facts, the court cannot substitute its interpretation in place of that of the learned Arbitrator. In order to buttress his contention, the learned counsel has relied upon the cases of Maharashtra State Electricity Board Vs. Sterlite Industries (India) & Anr. (2001 (8) SCC 482), Bharat Coking Coal Ltd. Vs. L.K. Ahuja (2004 (5) SCC 109), Rajasthan State Electricity Board Vs. M/s. Gammon India Ltd. (1998 DNJ (Raj.) 680), Indu Engineering & Textiles Ltd. Vs. Delhi Development Authority (AIR 2001 SC 2668), State of U.P. Vs. Allied Constructions (2003 (7) SCC 396), Rajasthan State Mines & Minerals Ltd. Vs. Eastern Engineering Enterprises (1999 (9) SCC 283) and D.D. Sharma Vs. Union of India (2004 (5) SCC

325).

Thirdly, the learned Sole Arbitrator had meticulously discussed the clauses of the contract and the facts of the case. Therefore, the learned Judge has rightly refused to interfere with the findings of the learned Sole Arbitrator.

Fourthly, since no volume of work was specified on a daily basis, the number of trucks placed at the disposal of the FCI was immaterial. The fact remains that the claimant transported the entire stock of food grain within the stipulated period of two years. Thus, the FCI did not suffer any loss. Therefore, they are unjustified in imposing the penalty for the alleged short supply of the trucks. Moreover, according to Clause-10(c) of the Contract, in case the contractor does not supply the required number of trucks as directed by the FCI, the FCI would be free to engage the services of other transporters without terminating the contract and the contractor shall be liable to make good to the FCI all additional charges, expenses, cost or losses that the FCI may incur or suffer

thereby. However, the FCI never engaged the services of other transporter. This clearly proves that the claimant has always supplied the requisite number of trucks needed for transporting the food grains. Hence, the learned Sole Arbitrator was justified in holding that the penalty amount should be refunded to the claimant.

Fifthly, with regard to the shortage of food grain, the learned Sole Arbitrator has meticulously examined the evidence and has come to the conclusion that there was no shortage of food grain. Since this court does not sit as an appellate court over the finding of fact, the same cannot be disturbed.

We have heard both the learned counsels and have perused the impugned order as well as the record of the case.

The scope of judicial review of the arbitral award is a narrow one. In order to escape the agony of a protracted trial, in order to save time and expenses, arbitration was developed as an alternate dispute resolution forum. In the commercial

world, where time is of essence and large amount of money is involved, the parties prefer to go for arbitration rather than for civil suit. The long gestation period of a civil suit, which meanders through a labyrinth of procedures and, at times, climbs the judicial pyramid, has persuaded the parties to place an arbitration clause in the contract. The scope and ambit of judicial review over an award passed by an arbitrator are now well settled. The arbitrator is a Judge appointed by both the parties after reaching a consensus, or a Court appoints him under the provisions of the Act. Since the Arbitrator is a Judge appointed by the parties, the parties are bound by his decision even if the award is wrong either on law or on facts. Even an error of law on the face of the award cannot nullify the award. Thus, his decision is final unless the reasons given by him are totally perverse or the award is based on wrong proposition of law. But once it is found that the view of the Arbitrator is a plausible one, the Court cannot reverse it by interfering with the award. Moreover, the interpretation of a contract is a matter solely within the domain of the arbitrator. Therefore, the Court should be very weary of interpreting the contract. Similarly, the

courts are precluded from reappraising the evidence produced before the arbitrator. The court does not sit in an appeal over the verdict of an arbitrator by reexamining and reappraising the materials placed before him. In case two views are possible, the Court is not justified in interfering with the award by adopting its own interpretation. Even if it could be proved that the arbitrator has committed some mistake while arriving at his conclusion, such a proof would not invalidate the award. Moreover, it is not “misconduct” on the part of the arbitrator to give a reasoned decision, where his error is one of the fact or of law. Furthermore, even if there is an error of construction of the agreement by the arbitrator, the same is not amenable to correction. Lastly the reasonableness of an award is not a matter for the Court of consider unless the award is preposterous or absurd. [(Ref. to M/s Engineers Syndicate v State of Bihar & Ors (2007 AIR SCW 985), Maharashtra State Electricity Board Vs. Sterlite Industries (India) & Anr. (2001 (8) SCC 482), Bharat Coking Coal Ltd. Vs. L.K. Ahuja (2004 (5) SCC 109), Rajasthan State Electricity Board Vs. M/s. Gammon India Ltd. (1998 DNJ (Raj.) 680), Indu Engineering & Textiles

Ltd. Vs. Delhi Development Authority (AIR 2001 SC 2668), State of U.P. Vs. Allied Constructions (2003 (7) SCC 396), Rajasthan State Mines & Minerals Ltd. Vs. Eastern Engineering Enterprises (1999 (9) SCC 283) and D.D. Sharma Vs. Union of India (2004 (5) SCC 325)].

Section 34 of the Act is as under:

"34. Application for setting aside arbitral award-

(1) Recourse to a court against an arbitral award may be made only by an application for setting aside such award in accordance with sub-section (2) and sub-section (3).

(2) An arbitral award may be set aside by the court only if,-

(a) the party making the application furnish that,-

(i) a party was under some incapacity, or

(ii) the arbitration agreement is not valid under the law to which the parties have subjected it, or failing any indication thereon, under the law for the time being in force; or

(iii) the part making the application was not given proper notice of the appointment of an arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or

(iv) the arbitral award deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration;

Provided that, if the decisions on matters submitted to arbitration can be separated from those not so submitted, only that part of the arbitral award which contains decisions on matters not submitted to arbitration may be set aside; or

(v) the composition of the arbitral tribunal or the arbitral procedure was not in accordance with the agreement of the parties, unless such agreement was in conflict with a provision of this Part from which the parties cannot derogate, or, failing such agreement, was not in accordance with this Part; or

(b) the court finds that-

(i) the subject-matter of the dispute is not capable of settlement by arbitration under the law for the time being in force, or

(ii) the arbitral award is in conflict with the public policy of India.

Explanation: Without prejudice to the generality of sub-clause (ii) of clause (b), it is hereby declared, for the avoidance of any doubt, that an award is in conflict with the public policy of India if the making of the award was induced or affected by fraud or corruption or was in violation of section 75 or section 81.

(3) An application for setting aside may not be made after three months have elapsed from the date on which the party making that application had received the arbitral award or, if a request had been made under section 33, from the date on which that request had been disposed of by the arbitral tribunal:

Provided that if the court is satisfied that the applicant was prevented by sufficient cause

from making the application within the said period of three months it may entertain the application within a further period of thirty days, but not thereafter.

(4) On receipt of an application under sub-section (1), the court may, where it is appropriate and it is so requested by a party, adjourn the proceedings for a period of time determined by it in order to give the arbitral tribunal an opportunity to resume the arbitral proceedings or to take such other action as in the opinion of arbitral tribunal will eliminate the grounds for setting aside the arbitral award."

In the case of Oil and Natural Gas Corporation Ltd. Vs. SAW Pipes Ltd. (AIR 2003 SC 2629), the Hon'ble Supreme Court has extensively dealt with the scope of Section 34(2)(v)(b)(ii) of the Act. According to the Apex Court, an arbitral award can be set aside if the court finds that the arbitral award is in conflict with the "public policy of India". The term "public policy of India" has been interpreted by the Hon'ble Court to mean, any award which is contrary to:-

(a) fundamental policy of India law;

(b) the interest of India;

(c) justice or morality, or

(d) in addition, if it is patently illegal. Illegality must

go to the route of the matter and if the illegality if of trivial nature it cannot be held that the award is against the public policy. The award could also be set aside if it is so unfair and unreasonable that it shocks the conscious of the court.

(e) if it is against the substantive law of India.

The Hon'ble Supreme Court has reiterated the same view in the case of Hindustan Zinc Ltd. Vs. Friends Coal Carbonisation (2006) 4 SCC 445.

Therefore, one would have to see if the impugned award is against the "public policy of India".

The first contention of the learned counsel for the FCI is with regard to the adoption of the "Fast Track Procedure" by the learned Sole Arbitrator. A bare perusal of the arbitration award does not disclose that the learned Sole Arbitrator had adopted the fast track procedure. According to the award, the arbitration proceedings lasted for at least seven months, i.e. from

20.3.2002 to 21.10.2002. During this period, the FCI did not move any application for examining any witness or for submitting their affidavit. In fact, neither of the parties examined any witness on their behalf, nor submitted any affidavit of a witness. Since no request was made, the learned Sole Arbitrator cannot be faulted for basing his entire award on the documentary evidence produced by the parties. Merely because he has decided the arbitration case on the basis of the documentary evidence, it cannot be presumed that the Arbitrator adopted the “Fast Track Procedure”.

In case the FCI were aggrieved by the procedure adopted by the learned Sole Arbitrator, they were free to raise their objections during the proceedings. However, the FCI did not take any such objection during the proceedings. Moreover, they did not challenge the procedure adopted by the Sole Arbitrator under the Act. Furthermore, According to Rule-58 of the ICA Rules, “any party who proceeds with the arbitration with the knowledge that any provision or requirement of these rules has not been complied with and who fails to state his objection

thereto in writing, shall be deemed to have waived his right to objection". In the light of Rule 58 of the ICA Rules, since the FCI did not raise any objection, in writing, with regard to the procedure adopted by the learned Sole Arbitrator, they are deemed to have waived the right to raise the objection. Lastly, even while filing its objections before the learned Judge, the FCI had not raised the objection with regard to the procedure adopted by the learned Sole Arbitrator. Therefore, the FCI is precluded from raising the said objection before this court. Hence, the first contention raised by the learned counsel for the FCI is unacceptable.

With regard to the short supply of trucks even during the arbitral proceedings, the claimant had admitted that there was short supply of 414 Trucks. Once the said position has been admitted, then according to Section 74 of the Contract Act, it was not necessary for the FCI to prove the loss suffered by them. Since the contract contained a penalty clause, the FCI was justified in imposing the penalty upon the claimant. Therefore, the reasoning of the learned Sole Arbitrator that

before a penalty can be imposed, a loss has to be proved is contrary to the tenor of Section 74 of the Contract Act. Since the said reasoning is contrary to the substantive law of India, the award should have been set aside to this limited extent of its finding about the imposition of the penalty by the FCI upon the claimant. However, the learned Judge has failed to set aside the award to this limited extent. Therefore, this court has no option but to modify the award and to direct that the FCI need not pay Rs.41, 100/- on account of penalty for short supply of trucks to the claimant. Moreover, the interest rate @ 12% on the said amount is also set aside.

As far as the shortage in the transportation of the food grain is concerned, it is a question of fact. A bare perusal of the award clearly shows that the learned Sole Arbitrator had meticulously examined the evidence and had come to the conclusion that the calibrations of the weighing bridge were faulty. Moreover, he has correctly applied the circulars issued by the FCI, as they would form part of the “usage of the trade applicable to the transaction”. Thus, it was in conformity with

Section 28 of the Act. Therefore, there was no shortage in the transportation of the food grain. Since it is a question of fact, therefore, the learned Judge was justified in not interfering with the finding of the learned Sole Arbitrator in this category. After all, the court does not sit as a court of appeal against the factual finding of an Arbitrator. Hence, this court, too, will not interfere in the compensation amount directed to be paid by the FCI to the claimant in the category of shortage of supply of food grain.

Since the entire quantity of food grain to be transported within a period of two years was, in fact, so transported by the claimant, there is no justification for the FCI to withhold the security deposit. Therefore, the learned Sole Arbitrator was justified in directing the refund of the same. Again this being a question of fact, the learned Judge could not have interfered with the same. Hence, this court, too, would not interfere with the said decision of the learned Sole Arbitrator.

S. B. CIVIL MISC. APPEAL NO. 3003/2006:

Mr. Paker Farooq, the learned counsel for the claimant, has argued that the grant of interest is a discretionary matter for the learned Sole Arbitrator to decide. While correctly exercising his discretion, the Sole Arbitrator had rightly awarded interest at the rate of 12 % on different categories of the compensation. However, the learned Judge has not given any cogent reason for reducing the interest rate on the different categories from 12% to 9%, except to say “it is in the interest of justice”. Thus, this part of the impugned order is a non-speaking order.

Secondly, Clause XI of the contract deals with the Security Deposit. According to the said clause, the security deposit “will be refunded to the contractor on due and satisfactory performance of the services and on completion of all obligation by the contractors under the terms of the contract and on completion of all obligations by the contractors under the terms of the contract and on submission of a no demand certificate subject to such deductions form the security as may be necessary for making up of the corporation’s claims against the contractor.” Despite the fact that the claimant had

completed his obligations under the contract, the said security deposit was not returned to him. According to sub-clause (d), “ the Corporation shall not be liable for payment of any interest on the security deposit or any depreciation there of for the time it is held by the Corporation.” The words, “for the time it is held by the Corporation” would mean during the tenure of the contract. It would not mean the entire time--after the completion of the contract--during which the FCI holds the security deposit. In case after the due completion of the contract, if the FCI still keeps the security deposit, then they are liable to pay the interest thereupon. Thus, the learned Sole Arbitrator was justified in directing the payment of 12 % of interest from 1-7-2000. However, without appreciating this aspect of the matter, the learned Judge has wrongly held that no interest would be payable for the entire time the FCI kept the security deposit with them.

On the other hand, Mr. S. C. Mittal, the learned counsel for the FCI, has argued that the words, “for the time it is held by the Corporation”, refers to the entire period, including the period

of dispute between the parties, during which the security amount is kept by the FCI. Moreover, the FCI had suffered losses; it was justified in keeping the security deposit with them

We have heard both the learned counsels on this point.

It is, indeed, a settled position of law that the awarding of the interest is the discretion of the arbitrator. The said discretion is not absolute, but is subject to Section 31 (7) of the Act. Section 31 (7) reads as follows:

> (7) (a) Unless otherwise agreed by the parties, where and in so far as an arbitral award is for the payment of money, the arbitral tribunal may include in the sum for which the award is made interest, at such rate as it deems reasonable, on the whole or any part of the money, for the whole or any part of the period between the date on which the cause of action arose and the date on which the award is made.
>
> (b) A sum directed to be paid by an arbitral award shall, unless the award otherwise directs, carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

Thus, unless the parties agree otherwise, the arbitrator is empowered to grant a “reasonable interest rate” upon the money or part of money to be paid, for whole of the period or

part of the period between the date on which the cause of action arose and the date on which the award is made. Moreover, unless the award directs otherwise, the compensation may carry interest at the rate of eighteen per centum per annum from the date of the award to the date of payment.

In the present case, the contract did not specify the rate of interest. Therefore, the parties have not agreed to a particular rate of interest. Hence, the arbitrator was free to impose a “reasonable rate of interest”. Considering the fact that the award is of 2003, an interest rate of 12 % was “reasonable”. The learned Judge has not assigned any reason, much less a cogent one, for reducing the interest rate from 12% to 9% except to state, “it is in the interest of justice.” As to how exactly it is in the interest of justice, the learned Judge has not spelled out. Vague terms like “in the interest of justice” would not legitimize the reduction of interest rate. Hence, this part of the judgment is unsustainable.

As far as the interest rate on the security deposit is concerned, it is essential to keep in mind that security deposit is kept by the FCI so as to ensure that the contractor fulfills his contractual obligations to the satisfaction of the FCI. But this does not mean that the FCI is free to withhold the security deposit indefinitely. In case the FCI had any grievance against the working of the claimant, it was free to start an arbitration proceeding against the claimant. However, in the present case, even when the claimant filed his claim petition, the FCI did not file a counter-claim. Thus, obviously, the FCI had no grievances against the working of the claimant. Although the FCI did claim it has suffered losses because of the inefficient working of the claimant, but they could not prove the same before the learned Sole Arbitrator. Hence, there was no reason for the FCI to withhold the security deposit beyond the period of the contract. Therefore, the words, “for the time it is held by the Corporation” would mean the period when the contract was in force and not beyond the said period. In case, the FCI were to hold the security deposit beyond the contract period, they would be liable to pay interest on the said deposit. Suppose the disputes

between the parties were to continue for decades and eventually it is discovered that the FCI had suffered no loss. In such a scenario, the FCI could not claim that they are not liable to pay the interest on the security deposit during the decades it took to resolve the dispute. For, the fortuitous circumstance that the disputes were not resolved for ages would not permit the FCI to enrich themselves and to cause wrongful loss to the claimant. Hence, the words “for the time it is held by the corporation” would have to be given a narrow interpretation to mean “the period during which the contract is in force and not beyond that period”. Thus, the learned Sole Arbitrator was justified in directing that 12 % interest should be paid on the security deposit from 1-7-2000—the post-contract period. The learned Judge was, therefore, unjustified in disturbing the direction of the learned Sole Arbitrator.

In the result, the appeals are decided as follows: the first appeal is partly allowed and the amount directed to be refunded for imposition of penalty, namely Rs.41, 100/- along with an interest of 12% per annum vide award dated 4-6-2003 need not to be paid by the FCI to the claimant. The second appeal is

allowed and the FCI is directed to pay the interest rate as directed by the learned Sole Arbitrator vide award dated 4-6-2003. To this limited extend, the order dated 4-2-2006 stands modified. The parties are left to bear their own costs.

(R.S. Chauhan) J.